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SB-2815
Submitted on: 1/30/2018 12:06:10 AM
Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans		Oppose	No

Comments:

The language of this bill will aggravate overcrowding and mass incarceration as it limits discharge from further liability to those who have fully paid restitution. Too limiting!

Thank you-

Raelyn Reyno Yeomans

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PROFESSIONAL BAIL AGENTS OF THE UNITED STATES

Hawaii Criminal Pre-trial Taskforce Public Meeting
October 13, 2017

To whom it may concern:

My name is Beth Chapman. I Chair the Board of Directors and I am the President of the Professional Bail Agents of the United States (PBUS). I also have the good pleasure of serving as the acting president of the Hawaii Bail Agents Association. My husband Duane, "Dog" Chapman and I, were the stars of our first show, "Dog the Bounty Hunter," which ran for eight seasons on A&E. We also had a show "Dog and Beth: On the Hunt," on CMT for four seasons. PBUS is a national association which represents bail agents' interests before the business community, citizens and government entities. I have been in the bail bond business for nearly 30 years and have been operating in the state of Hawaii for 17 years while my husband has been in the business for over 40 years and nearly 30 of those in Hawaii. We chose to raise our family here and conduct our business here because we love Hawaii and its people.

I appreciate the opportunity to bring the combined experience of thousands of bail bond agents to the table in this conversation as the state of Hawaii considers reform in this area. We, as an industry, have worked in hand with the judicial system in the United States since the inception of our country. Cash or guaranteed surety bail is the most cost effective, efficient, and performance effective tool to ensure the appearance of the defendant to court and good behavior while awaiting trial. It is also the only system which is user funded and does not require the taxpayer to foot the bill for mistakes and ill choices of those who break the law. With that being said, I would like to highlight a few policy considerations and practices which I and the bail bond industry feel are of the utmost importance to the balance of public safety and the rights of the accused.

Cost and Performance of Non-Monetary Release

States which have implemented bail reform after following similar taskforce meetings like what Hawaii is currently engaging have enacted policies which have been a detriment to the safety needs of the public and have shifted the cost burden to the taxpayers.

Proponents of a "risk assessment" and a system which requires the "least restrictive means of release" continue to point to the system in Washington D.C as the pinnacle of pre-trial release programs. They laud it as a successful system which should be mimicked. The numbers, however, simply do not justify the hype. Washington D.C. has a little over 700,000 citizens and the cost of running their "free" pre-trial system is a whopping $65 million dollars a year. However, the numbers get even worse when you consider the number of defendants processed by D.C. They, much like HPD, process between 16,000 and 20,000 defendants which puts the cost, per defendant, between 3,250 and 4,062. That is the cost to detain, process, or release and supervise just one defendant. Remember, right now that cost is being borne completely by the offender and bail industry not by the taxpayer. But when you remove cash or surety bail the total cost shifts to the taxpayer.

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The initial projections pitched to the New Jersey legislature put the cost of the new system at around 20 million; however, current projections have now approached 300 million. We in Hawaii know all to well the pain of following false projections as we are currently suffering with the light rail boondoggle. We must take precautions from every other state that has dealt with bail reform and know that the cost projections have always missed the mark. We cannot invite another boondoggle onto the shoulders of the good people of Hawaii.

Even if we were to put the cost aside and just look at the results in what matters the most, namely the safety of the citizens, Washington D.C. fails tremendously. The crime rate in D.C. is at the top 3% in the nation. Only 3% of other cities in the nation are more dangerous than Washington D.C. In D.C., 1 in 79 people will become the victim of a violent crime and 1 in 21 will become the victim of a property crime. Again, proponents point to what they consider the success of Washington D.C. because they don't have very many people in jail awaiting trial. However, with those terrible crime statistics maybe there should be more criminals in jail.

This trend is not isolated only to D.C., New Jersey just implemented a policy which requires "least restrictive release" a "risk assessment" and one which removed judicial discretion completely and the results have been disastrous. Crime rates have skyrocketed and more people are being victimized as a result. It has even prompted members of law enforcement to proclaim publicly that "we can't protect you anymore".

Detective Joe Indano of South Plainfield, New Jersey voiced his frustration and stated, "Nobody's afraid to commit crimes anymore. They're not afraid of being arrested, because they know at the end of the day, they're going to be released. Its catch and release. You're chasing around the same people over and over again. They're being released and going back and offending and now you have more people as victims."

However, the frustration doesn't just stop at law enforcement. Lawmakers are discovering that they were sold a bill of goods and even those who advocated for the reform are now speaking up against other states following New Jersey's example. New Jersey Assemblyman Bob Andrzejczak (D) even went so far as to send a letter, which I have attached, to California Speaker of the House Rendon urging him to reconsider passing similar reforms in California. He said in that letter that since the law went into effect in January it has been an "absolute disaster" and that "This law is victimizing law abiding citizens everyday".

In New Mexico, the Supreme Court decided to implement similar bail reforms without the legislature and it has caused havoc in that state. The move has prompted a coalition of citizens, bail industry members, and lawmakers to file a lawsuit against the state's Supreme Court. It has also prompted New Mexico Senator Bill Sharer to call for the resignation of Chief Justice Daniels.

This argument about bail reform has not only been fought in the legislative chambers across the country but also in the court room. Already the 5th circuit, 9th circuit, and 11th circuit have taken challenges by bail reformers against the current system and currently the 11th has ruled against the presumption of free bail. Arguments have been heard in the 9th and 5th. It is important to note that the 5th circuit justices' arguments in the O'Donnell v. Harris County case seem to suggest that the scope of the relief by the lower court (non-monetary release of all misdemeanor defendants) went too far and that removal of judicial discretion is a dangerous slippery slope.

Presumption of Innocence Pre-Trial

The conversation revolving around bail has become centered on the rights of the offender and preferring the offender over the law abiding citizen. Proponents would have you believe that there are countless individuals "languishing" in jail because they cannot afford bail. However, bearing extraordinary circumstances; a vast majority of people in jail are there because they broke the law. They have also broken the trust of society and justice must be served. The constitution guarantees that the accused is innocent until proven guilty. The criminal justice system guarantees that society will have its opportunity to bring the charges against a defendant and the defendant will have his day in court. It is the responsibility of the state to balance the rights of the accused with the necessity of societal justice. This does not imply an

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implicit trust in the offender and that his or her presumption of innocence extends to pre-trial release, in fact it should be regarded oppositely and has been held in many courts that way.

As the Alliance of California Judges stated in their May 9, 2017 opposition letter to SB10:

> "The bills inject the concept of the presumption of innocence into a context in which it simply doesn't belong. The proposed legislation would require judges to consider the presumption of innocence in making pretrial release decisions. This provision makes no sense. While the presumption of innocence is at the heart of our criminal justice system, it's a concept that applies at trial, not in the context of rulings on bail. Both the United States and California Supreme Courts have long maintained that the presumption of innocence 'has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun.' (Bell v. Wolfish (1979) 441 U.S. 520, 533; see also In re York (1995) 9 Cal.4th 1133, 1148.)"

Bail bonding adds a layer of personal accountability in the form of monetary interest by the accused, their friends and family, or a bondsman willing to put up a portion of his business so the offender may be released. In short, if someone has a personal financial stake in the accused, they will do everything to ensure they stay out of trouble and show up for court. And, in the event they miss court those with financial interest will do anything to help find them so as to avoid losing that financial interest. It is a system which has worked effectively for over 200 years in this country and one with a high success rate most topping 90% return rates. Most pre-trial programs see a return rate of a dismal 50%-75%. In Hawaii, when the legislature allowed emergency release we saw failure to appear rates of upwards of 50%. That compares with 3%-7% in most bail bond companies.

Rights of the Victim Frequently Disregarded

Some of the most egregious results of bail reform policies across the country have been the victimization of law abiding citizens and the preference of the criminal over the victim in many cases. Often, the needs of the offender and attention to their situation have taken the precedence to that of the victim. It has been said in places like D.C. and New Jersey that the offender is released from jail even before their victim is released from the hospital. Other victims who suffer property crimes at the hands of offenders who commit multiple crimes are victimized more frequently under non-monetary release policies.

Catherine Keller, a victim of serial home invasion criminal Dawud Ward in New Jersey expressed her frustration and said, "I was totally disgusted that he just kept on being released and two days later he is doing to someone else's house and he is doing the same thing. The system is broken."

Victim's rights would take a back seat in the initial bond setting hearing as well. Most of these policies require a hearing within 24-48 hours in an evidentiary setting to determine if non-monetary release should be exempted in favor of detention or monetary release. This is done because the laws require the "least restrictive release" and remove judicial discretion in favor of what becomes a "probable cause hearing" to require something more restrictive. The laws require the state to prove that the offender is a threat which would result in them calling testimony from witnesses in the initial bond setting hearing. This is a fine point that is always missed in the initial discussions of bail reform but one which re-victimizes the truly innocent. Could you imagine the trauma of suffering at the hands of a criminal then being required to re-live that trauma again within 24-48 hours just to prove that your assailant truly is a threat?

That is the reality for victims when you remove judicial discretion.

Risk Assessment verses Judicial Discretion

What has occurred recently is those who see the criminal as the victim of circumstance, rather than society as the victim of crime, now want society to foot the bill for the mistakes of the criminal. They want society to blindly trust that everyone arrested can be trusted to be released from jail for free and with no accountability. Unfortunately, we know that

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rarely do you catch someone the first time they commit a crime. So, even though we may be looking at a "first time" offender in the eyes of the legal system, it is most likely that we will never know of the other crimes they have committed but were never caught. It is unwise and dangerous to release someone charged with a crime, without any accountability, and simply trust in a hope and a prayer that they won't reoffend while they are out.

Of course, we cannot possibly know who will reoffend or who will ultimately fail to appear, so the wisest move is to treat every offender with the least amount of trust and work our way up from there. However, the proponents of bail reform laud the "risk assessment" as the only tool to truly evaluate the risk of an offender. Generally these assessments are comprised of 7-13 questions combined with statistical information to try to ascertain the risk level of an individual. But, no matter how scientific they try to make it sound, at the end of the day it remains a guess. The safety of the public and the assurance of justice ride on an educated guess from an antiquated computer program. The mistrust of the "risk assessment" tool led Nevada Governor Sandoval to veto their bail reform bill stating that "there is no evidence that risk assessments work". Even in New Jersey, the Attorney General who was one of the main proponents of their reform admitted that the risk assessment tool they are using from the Arnold Foundation was flawed.

The risk assessment tools are a great tool to have at the disposal of the judges when setting bail but should never be the determining factor. I think it should be fair to point out that the Arnold Foundation, Governor Chris Christie, and Attorney General Chris Porrino are all being sued in New Jersey for the flawed implementation of the risk assessment tool which led to the death of Christian Rogers. This is both a depravation of constitutional rights and a products liability case. Christian's alleged killer was released under the bail reform policy and three days later gunned down Christian while he was walking home. This was without provocation, in cold blood, and in the middle of the day. A look at the rap sheet of the alleged shooter, Jules Black, will show that this man was a risk. He was arrested on gun related charges and, in the least, should have been out only on secured bond with some kind of supervision.

Personal responsibility has taken a backseat in these discussions and it is being replaced with guilt on society that we are keeping the down trodden suppressed by jailing criminals and holding them accountable to face their consequences. There is no doubt that there are some special circumstances where an individual has suffered inappropriately under the current system. But, those situations should be looked at individually and fine tuning of the law should be implemented to fix those problems. To take a few examples and superimpose massive, dangerous reform to an effective system and have a "broad brush" approach will only further remove personal responsibility of the offender and transfer the costs and danger of the criminal to law abiding citizens. Protecting the welfare of law abiding citizens should be good enough reason for anyone to tread very lightly in instituting these massive and dangerous reforms.

The private bail industry has a long and historic partnership in the criminal justice system. The purpose of bail is to ensure the appearance of the defendant in Court. Private bail has done this for generations in the United States with an astounding record of reliability and accountability at no cost to the taxpayer. Bail agents not only have a financial interest in making sure a defendant appears in Court, but they also have a fiduciary commitment to the Courts, taxpayers, and victims of crime. The Hawaii Bail Agents Association and the PBUS respectfully requests that you take the time to review the ramifications of these types of policies and include industry experts which have tremendous experience in the discussion. We ask that common sense rules and parameters be put in place that will protect public safety and use taxpayer dollars in the most efficient and effective manner. Please take a moment to watch a brief video regarding pretrial release (https://youtu.be/9-tCa3GKrQ8).

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Alliance of California Judges

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May 9, 2017

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The Honorable Rob Bonta
Member of the State Assembly
State Capitol, Room 2148
Sacramento, CA 95814

Re: Assembly Bill 42

Dear Assemblymember Bonta:

As President of the Alliance of California Judges, a group of more than 500 judges and retired judges from across the state, I write to express our strong opposition to Assembly Bill 42 and Senate Bill 10, bills that would radically alter the current bail system.

Our member judges make thousands of rulings on bail issues every day. We recognize that not everyone has the ability to post bail pending trial. We address that concern by adjusting bail amounts and releasing defendants on their own recognizance or on pretrial release under appropriate circumstances. We know that our current bail system needs further reform. But the proposals contained in these bills are simply too drastic, and the effects on public safety and court congestion could be catastrophic.

We note at the outset that these bills run counter to the letter and the spirit of the California Constitution as amended by Proposition 8, the Victim's Bill of Rights, which passed with 83 percent of the popular vote in 1982. Prop 8, which the Legislature voted, with only one dissenting vote, to put on the ballot, added the following language to Article I, § 12:

> "In fixing the amount of bail, the court shall take into **consideration the seriousness of the offense charged, the previous criminal record of the defendant**, and the probability of his or her appearing at the trial or hearing of the case." [Emphasis added.]

If that constitutional mandate weren't clear enough, the voters passed Proposition 9, "Marsy's Law," in 2008. Prop 9 added the following language regarding bail to Article I, § 28 of the Constitution:

> "In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous

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> criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. **Public safety and the safety of the victim shall be the primary considerations.**
>
> "A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail." [Emphasis added.]

The proposed bills strip judges of the authority to set bail in the majority of cases, and they substitute a different set of priorities for judges to follow in those cases for which they could still set bail. This new vision for bail cannot be reconciled with the Victim's Bill of Rights and Marsy's Law in our state constitution.

We highlight just a few of the other serious concerns we have with these two bills:

- **The bills would heighten the risk to public safety.** Those arrested for selling drugs, committing identity theft, vandalizing homes and businesses, stealing huge sums of money, or burglarizing dozens of businesses would all presumptively be granted pretrial release—without having to appear before a judge, post bail or submit to any conditions upon release. These bills also inexplicably exclude residential burglary from the list of crimes for which arrestees are not to be considered for release without judicial authorization.

- **These proposals would create more congestion in our busiest courts.** Under the proposed legislation, judges in most cases could set bail or impose pretrial release conditions such as electronic monitoring only after a hearing. We can expect that prosecutors will be requesting lots of these hearings. Our arraignment courts—already the busiest courts in the entire judicial system—would become completely clogged with bail hearings.

- **The bills completely upend the way in which we handle arrest warrants, to the detriment of the court system and the arrestees themselves.** By eliminating the judge's ability to set a bail amount when issuing a warrant, the proposed legislation virtually ensures that wanted suspects will not be brought to justice in a timely manner, if at all. Moreover, those arrested on warrants could not be released until a judge makes an individualized ruling that considers the arrestee's ability to pay. Arrestees who might otherwise simply pay their bail and be released from custody will instead languish until their cases can be heard.

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- **The bills place an undue—and wholly unrealistic—burden on the prosecution.** The bills would require in some cases that the prosecuting agency be prepared for a contested hearing with live witness testimony in less than 24 hours, at risk of a dangerous felon being set free. The bills also create a presumption of release pending trial that law enforcement will seldom be able to rebut within the timelines contemplated by the bill, even when the court is faced with a violent criminal facing serious felony charges.

- **The bills inject the concept of the presumption of innocence into a context in which it simply doesn't belong.** The proposed legislation would require judges to consider the presumption of innocence in making pretrial release decisions. This provision makes no sense. While the presumption of innocence is at the heart of our criminal justice system, it's a concept that applies at trial, not in the context of rulings on bail. Both the United States and California Supreme Courts have long maintained that the presumption of innocence "has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun." (Bell v. Wolfish (1979) 441 U.S. 520, 533; see also In re York (1995) 9 Cal.4th 1133, 1148.)

AB 42 and SB 10 are well-intended attempts to address the fact that the bail system affects persons of differing income levels differently. But nearly every county now has a pretrial services division in place to screen defendants and recommend their release on appropriate conditions, without bail, when doing so does not pose a serious danger to the public or a significant risk of non-appearance. A bill mandating a pretrial release program in every county, and perhaps providing some limited funding for that purpose, would be a sensible response to the problem. These twin bills go way too far, and their effect would be a near shutdown of the court system and a serious risk to public safety. We urge that these proposals be reconsidered and substantially amended.

Sincerely.

Hon. Steve White
President

cc: ACJ Board of Directors

CDAA
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April 11, 2017

The Honorable Rob Bonta
California State Assembly
State Capitol
Sacramento, CA 95814

RE: AB 42 – Oppose

Dear Assemblyman Bonta:

On behalf of the California District Attorneys Association (CDAA), I regret to inform you that we are opposed to your measure, AB 42. This bill would dismantle California's longstanding bail system, replacing it with a costly and cumbersome alternative that we believe will have a negative impact on public safety. While we agree that California's bail system should be reviewed and opportunities for thoughtful improvement identified, this bill simply goes too far, too fast.

As you know, Chief Justice Tani Cantil-Sakauye has put together a Pretrial Detention Reform Work Group to study current pretrial detention practices and provide recommendations for potential reforms. This work group is expected to report back to the Chief Justice with recommendations by December 2017. In light of that timeline, we believe that any legislative efforts to repeal and replace the current bail system are premature.

California's current pretrial release procedures help to ensure that dangerous defendants are not released to commit new crimes and harm victims and witnesses before trial. Under these procedures, the court already has wide discretion to release a defendant on his or her own recognizance, or to reduce bail for defendants that do not pose such risks. Whatever the deficiencies in the current system, it hardly seems prudent to take it apart and start from scratch.

AB 42 focuses on the costs of incarceration and hardships to the defendant caused by pretrial detention, but wholesale pretrial release has many other costs. When a defendant fails to appear, there is no bail agent with motivation to go find the defendant. The police have no additional resources to find and arrest defendants who fail to appear – and even those who are apprehended after failing to appear are only be subject to a maximum five-day flash incarceration, following a civil contempt hearing.

There are also tremendous logistical problems with the proposed pretrial release scheme. Under the bill, when Friday is a court holiday, a Wednesday arrestee must be charged by Thursday. So, when someone is arrested on Wednesday at

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11:00 p.m., the police must complete reports, present them to the district attorney on Thursday, and expect the district attorney to make a careful charging decision in time for an afternoon court arraignment. This compressed timeline will undoubtedly result in the release of dangerous individuals.

Even when given a full two days before arraignment, AB 42 makes it extremely onerous to achieve pretrial detention for dangerous defendants. The district attorney must file a written motion at arraignment, containing myriad required allegations, and be expected to prove those allegations in a contested hearing – all of this within 48 hours of the arrest. The existing bail schedule system allows judges to exercise discretion to raise or lower bail for violent felons, in a sensible period of time.

Changing the pretrial release system to address actual injustices is a laudable goal. However, these changes should be careful and measured, particularly for offenses greater than misdemeanors and low-level felonies.

I greatly appreciate your consideration of our concerns. If you would like to discuss these issues further, please do not hesitate to contact me.

Very truly yours,

Sean Hoffman
Director of Legislation

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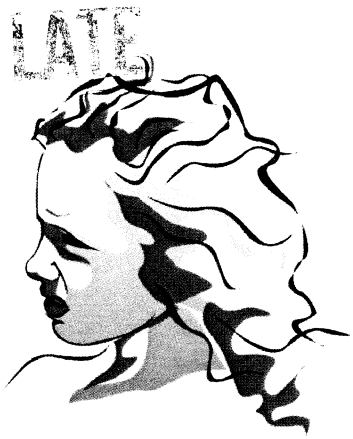
KLAAS KiDS
foundation



July 17, 2017

The Honorable Robert M. Hertzberg
California State Senate
State Capitol
Sacramento, CA 95814

RE: Senate Bill 10 (Oppose)

Dear Senator Hertzberg,

On behalf of the KlaasKids Foundation staff, volunteers and crime victims throughout California, I strongly oppose Senate Bill 10. Beyond its obvious threat to public safety and its fiscal ambiguity, it is a clear violation of the Victim's Bill of Rights, and Marsy's Law. In the final analysis it kneecaps California's community of victims.

In 1982, California voters overwhelmingly approved of Proposition 8, otherwise known as the Victim's Bill of Rights. The nation's first ever Victim's Bill of Rights clearly states that, "In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial of hearing of the case." However, SB 10, as written, only contains information about the current offense and, with exceptions, will allow, "Recommendations on conditions of release for the person immediately upon booking."

Proposition 9 (Marsy's Law) provided the constitutional right of victims to be notified and informed before any pretrial disposition of the case and to be heard upon the request of the victim at any delinquency proceeding involving a post-arrest release decision. SB 10 fails to explicitly account for the right of the victim to be notified or to be heard as part of such an appearance. Furthermore, the speed at which defendants are rushed back onto the streets makes it impossible to facilitate the rights afforded victims under Marsy's Law.

SB 10 will make it very difficult for crime victims to come forward knowing that their assailant will be back on the streets within hours of being arrested. Without a monetary incentive to appear at court dates, many victims will never receive justice.

The KlaasKids Foundation vehemently opposes SB 10. We acknowledge that California's bail system is in need of repair, but do not believe that Senate Bill 10 is the answer. It is ill conceived, and completely disregards public safety and the needs of crime victims. SB 10 follows the current trend in criminal justice legislation by focusing on the needs of defendants and criminals at the expense of crime victims.

Sincerely,

Marc Klaas

Marc Klaas
President, KlaasKids Foundation

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A mile a minute....
that is how fast your child can disappear

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July 3, 2017

Dear Speaker Rendon,

I am a democratic member of the New Jersey Assembly representing Legislative District 1. Prior to joining the Assembly, I served in the Iraq War as a sergeant in the Army's 25th Infantry Division until my discharge following an injury which led to the amputation of my left leg from a grenade explosion in 2009. As a result, I was awarded the Purple Heart and Bronze Star; my recovery was featured on a 2009 episode of The Oprah Winfrey Show.

As you may know, New Jersey passed and has implemented a bail reform policy similar to California's SB10 which you are considering. I supported the legislation when presented to our Assembly and advocated for its passage. The law went into effect this past January and it has been an absolute disaster. The public safety needs of citizens in New Jersey has suffered far greater than could have been imagined. The costs to the state have increased exponentially and, even worse, the constitutional rights of many of the accused are being infringed.

We were told that there would be no danger to citizens because the dangerous criminals would not be released and on "low level" criminals would be eligible. The reality is that dangerous and career criminals are released daily within hours of arrest. We should never have considered free bail to those who commit crimes where a citizen has been victimized. We may only catch a criminal once out of a multitude of crimes in which they commit. They are simply not afraid of committing crimes against citizens and as a result our crime rate has increased at least 13% since January. This law is victimizing law abiding citizens every day.

We were also misled as to the cost of implementation and continuation of this policy. It has become apparent to us now that the cost of incarcerating those held awaiting trial were greatly exaggerated. Additionally, we have transferred the cost of "free" bail to the taxpayer rather than the offender. The bail system supported many functions of the court and the cost of re-arresting multiple offenders and bail jumpers was borne by the offenders themselves rather than the taxpayers. Now we are making taxpayers pay to release criminals back into their neighborhoods and with no accountability. The state does not have the resources to properly monitor these people out on bail so we don't. This is a powder keg and our citizens are suffering because of it.

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Not only are our citizens suffering but now even the accused are being denied their constitutional right to pre-trial release as a result of the new laws. The eighth amendment to the Constitution of the United States guarantees an accused the right to "reasonable bail". However, in New Jersey, many are being denied that right. This is not just happening to dangerous criminals it is happening to low level offenders as well. The risk assessment system is simply not working. In January, a convicted child predator was arrested for attempting to lure a 12 year old girl to his house for "sexual things". The risk assemsment determined he was not a threat and was released. The police chief of Little Egg Harbor was so distressed by this that he appealed the release all the way to our supreme court and was denied. The man was released back into the same neighborhood where the "would be" victim resides. The only recourse for law enforcement was to post on Facebook a warning to the community.

I am not "in the bag" of any industry or special interest. I fully thought this was the right thing to do because of the arguments we heard. I am writing to you because I have experienced this first hand and it has been a disaster. I am trying to rectify a problem in New Jersey that we caused and hopefully encourage you not to make the same mistake. Please listen to the experts on this issue and look at the examples before you because the safety and financial interests of your citizens are at stake. Thank you for your time.

Sincerely,

Bob Andrzejczak
Assemblyman, First Legislative District

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Office of the Governor

May 26, 2017

The Honorable Jason Frierson
Speaker of the Nevada State Assembly
The Nevada Legislature
401 South Carson Street
Carson City, NV 89701

RE: Assembly Bill 136 of the 79th Legislative Session

Dear Speaker Frierson:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Assembly Bill 136 ("AB 136"), which is entitled:

> AN ACT relating to criminal procedure; revising provisions governing factors to be considered by the court in deciding whether to release a person without bail; prohibiting a court from relying on a bail schedule in setting the amount of bail after a personal appearance by a defendant; and providing other matters properly related thereto.

AB136, while commendable in some respects, would incorporate a new and unproven method for determining whether a criminal defendant should be released from custody without posting bail. No conclusive evidence has been presented showing that the risk assessment methods proposed by AB136 are effective in determining when it may or may not be appropriate to release a criminal defendant without requiring bail. Decisions made by judges during the bail phase of a criminal prosecution are of the utmost importance. It is not clear that the provisions of AB136 will enhance the ability of Nevada's judges to make these determinations in a manner that balances the interests of justice and public safety.

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For these reasons I veto AB136 and return it without my signature or approval.

Sincere regards,

BRIAN SANDOVAL
Governor

Enclosure

cc: The Honorable Mark Hutchison, President of the Senate (without enclosure)
The Honorable Aaron Ford, Senate Majority Leader (without enclosure)
The Honorable Barbara Cegavske, Nevada Secretary of State (without enclosure)
Claire J. Clift, Secretary of the Senate (without enclosure)
Susan Furlong, Chief Clerk of the Assembly (without enclosure)
Brenda Erdoes, Esq., Legislative Counsel (without enclosure)

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JUDICIAL COUNCIL OF CALIFORNIA

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

June 30, 2017

Hon. Reginald B. Jones-Sawyer, Sr., Chair
Assembly Public Safety Committee
State Capitol, Room 2117
Sacramento, California 95814

Subject: Senate Bill 10 (Hertzberg), as amended March 27, 2017 – Letter of Concern
Hearing: Assembly Public Safety Committee – July 11, 2017

Dear Assembly Member Jones-Sawyer:

The Judicial Council has a number of significant concerns about SB 10, as amended March 27, 2017. SB 10 would enact major bail/pretrial release reform. While there are some areas of conceptual agreement the Judicial Council continues to have substantial concerns about many elements of the bill including the impact on judicial discretion and independence; the creation of unrealistic or unspecified timelines; the imposition of unrealistic responsibilities and expectations on the pretrial services agencies that courts would rely on for information in making decisions, and the creation of an overly burdensome and complicated system. While expressing these concerns about SB 10, the Judicial Council acknowledges that SB 10 is a work in progress. We have been in communication with the author's office and the sponsors and we understand that the author is considering amendments.

Areas of Conceptual Agreement

While the Judicial Council has a substantial number of very significant concerns about SB 10 in its current form, in concept, the council agrees with the following:

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- Providing for pretrial release, with or without conditions as appropriate, for all eligible defendants, and providing for preventive detention for defendants who pose a high risk to public safety or of fleeing the jurisdiction.

- Exploring the implications of moving from a pretrial release and detention system that is implemented primarily through the setting of money bail to a system that focuses on evidence-based risk assessment that considers the risk to public safety and victims with the risk of fleeing the jurisdiction and failure to appear, and is implemented through setting conditions of release, and preventive detention for cases in which no combination of conditions of release will be sufficient to address the risk.

- Providing pretrial services in a manner that: 1) closely coordinates with the courts; 2) delivers risk assessment information, criminal history, and other data relevant to judges' determinations of conditions of release for defendants; 3) includes monitoring and supervision of defendants released pretrial, where appropriate; and 4) is funded at a level to adequately and properly address the costs of such services.

- Use of a validated risk assessment instrument that does not give undue weight to factors that correlate with race, ethnicity, and class to obtain a risk level or score.

- Respect for the constitutional principle of judicial discretion and responsibility for pretrial release and detention decisions, and with aiding judges in their decision-making responsibility by providing risk assessment and other relevant information gathered by pretrial services.

- Improving upon the current system of pretrial detention/release to enable judges to make appropriate decisions as quickly as possible when there is adequate information on which to base such a decision, and so long as there are new and sufficient resources for the system.

Areas of Concern

Judicial discretion and independence

The Judicial Council is concerned that SB 10 would infringe on judicial discretion and independence for the following reasons:

- *Balance of system interests*: The council is concerned that SB 10 does not establish a reasonable or realistic balance between the interest in releasing all defendants who can be safely released pretrial, and a concern for public safety (including safety of victims) and the administration of justice (fleeing jurisdiction/failure to appear). Judges have

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constitutional and statutory responsibility for implementing the law in ways that ensure appropriate consideration for protecting the rights of the accused, protecting the public and victim(s), and providing for the fair and efficient administration of justice. In that regard, the council is concerned that SB 10 would require the pre-arraignment release *by the pretrial services agency* of any person charged with a misdemeanor (unless the defendant is already on pretrial release), without providing an opportunity for a judge to determine whether the defendant (who may be charged with a serious misdemeanor, including domestic violence) is a risk to public safety or the safety of the victim(s), or is likely to flee. SB 10 also does not account for those defendants who fail to appear and are cited and released rather than booked.

- *Matters appropriate for Rules of Court*: The bill has a number of detailed requirements for judicial decision-making that are more appropriately addressed in Rules of Court rather than statutes, so they can be more easily revised and updated. For example, the council believes that it is more appropriate for Rules of Court to address certain factors courts must consider in making their determination, such as what the court must consider in making a release decision, what constitutes "substantial hardship" in determining ability to pay, and factors for determining whether the defendant's release would result in great bodily harm to others.

- *Information provided to the court*: The bill appears to significantly limit information provided to the judge at pre-arraignment as a basis for the release determination. As currently drafted the bill would only require information about the current offense, the law enforcement list of charges, and a risk assessment result. The bill, however, does not allow other important information to be provided to the judge such as criminal history, probable cause documentation or other background related to the risk assessment.

- *Balance between judicial authority and pretrial services authority*: Substantial burdens are imposed on judges to justify any departure from recommendations of the pretrial services agency, including requiring courts, if the release decision is inconsistent with the recommendations of the pretrial services agency, to include a statement of reasons. The bill also requires the court to annually report the rate of judicial concurrence with recommended conditions of release without requiring the provision of additional data regarding the decisions made, the conditions actually imposed initially and through the course of the case, etc. Reporting solely the rate of concurrence implies that judges are discouraged from exercising any discretion that departs from the pretrial services recommendations.

- *Judicial determination of risk*: SB 10 would allow the court to impose preventive detention only for those defendants who are charged with a violent or serious crime. The

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council is concerned that this makes the bill ineffective and unfair because the determination is charge-based rather than risk-based and appears to not allow the judge to take criminal history or other factors into account. Further, the council believes that courts should have the option of imposing preventive detention for those defendants who, whatever their current charge, score in the highest risk levels and for whom no condition or combination of conditions can provide for safe pretrial release.

- *Release on bail*: The bill provides for release on bail in a manner that places judges in the untenable position of being required to release on bail defendants who are at high risk of failure to appear (FTA) or of danger to public safety. This structure undermines the legislation's goal of judicious use of preventive detention to protect public safety while releasing defendants who are appropriate for pretrial release. For example, the proposed bill would prohibit release on bail *except* when no condition or combination of conditions can assure safe pretrial release. It requires the court to set monetary bail at the least restrictive level necessary and to consider ability to pay without substantial hardship. This arrangement affords "high risk" defendants the opportunity to be released on bail *despite* their risk level, unless they have been charged with a violent or serious offense. Further, the bill appears to limit the court's ability to consider the appropriateness of preventive detention in cases where the defendant has a history of violent offenses but has a current offense for which preventive detention is not statutorily permitted.

- *Violations of release*: The proposed approach for addressing violations of pretrial release is unrealistic and impinges on judicial discretion because the sole option for addressing violations of pretrial release is through contempt of court proceedings, which is not an adequate solution. Contempt is a complex and extended process for courts to impose and implicates Penal Code section 1382 rights. Penal Code section 1382 requires the court, unless good cause is shown to the contrary, to order an action dismissed in specified cases.

Timelines/Resources

The Judicial Council is concerned that the bill would impose unrealistic (and unspecified) timelines on courts. The bill would require informed decision-making on timelines that are unrealistic for courts and criminal justice partners. For example, the bill would: (a) require pretrial services agencies to gather and courts to process a significant amount of information regarding a defendant on very tight timelines; (b) require judges to issue findings of fact and a statement of the reasons for imposing each condition that are specific to the person in each case where conditions are imposed; and (c) require up to five pre-arraignment hearings on very tight timelines. Currently, many of the timelines in SB 10 are yet undefined, to be filled in through later amendments. The council is also concerned that the limitations on hearings are unclear, so it seems they could be as extensive (and time consuming) as a preliminary hearing with

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presentation of witnesses, cross-examination, and submission of other evidence. Because the proposed system is so complex, it is unclear whether there is a need for these multiple hearings in order to accomplish the legislation's stated purposes.

Pretrial Services agencies: unrealistic responsibilities and expectations

The Judicial Council is concerned that the bill would impose unrealistic responsibilities and expectations on the pretrial services agencies that courts would rely on for information when making decisions, as follows:

- *Courts' interest in effective pretrial services agencies*: The proposed system requires pretrial services agencies to undertake a variety of tasks that are integral to efficient and effective decision-making by courts. Courts have a vested interest in the effectiveness of agencies with such significant responsibilities that are intertwined with those of the court. In many counties, such agencies either do not currently exist or are relatively small. For a pretrial release and detention system to function, courts must have confidence that pretrial services agencies—whether a separate agency or a unit of an existing agency—are right-sized and well-run so that courts can rely on the agencies' assessments, recommendations, and ability to monitor and supervise defendants granted pretrial release.

- *Risk assessment instrument*: Portions of the bill that define the use of a risk assessment tool by pretrial services raise questions regarding validity, reliability and access. More specifically, the bill would mandate certain criteria for the tool and prohibit other criteria. This approach would undermine the fundamental requirement that the factors in an evidence-based tool, and the algorithm used to weight the factors, have been validated to be predictive of risk for a particular population. Further, the council is concerned that *only* the PSA-Court instrument developed by the Laura & John Arnold Foundation currently appears to meet the requirements of SB 10.

Burdensome and complicated system

Finally, the Judicial Council is concerned that SB 10 would create a non-linear and highly complex system. More specifically, the council is concerned that the operational impact on courts would be profound and, without adequate funding, unachievable. The council is also concerned that SB 10 would attempt to graft at least four different release and detention elements onto the current statutory structure for the bail system: risk-based release; unsecured bonds; ability-to-pay determinations; and preventive detention. Further, in many counties, a significant portion of the pretrial population is ineligible for release due to probation or parole holds, immigration (ICE) holds, holds for multiple failures to appear, or other legal circumstances that prevent their release. The council believes that it would be inefficient to use resources to assess defendants, process paperwork, hold hearings, etc. for defendants who will not be eligible for

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release due to circumstances that arise from legal issues unrelated to the current charge. Finally, the council believes that any significant revision to the current pretrial detention and release system should be phased-in with at least a two year "sunrise" so that courts and justice system partners are able to put the necessary structures, processes and training into place, and help to ensure that the revised system will be functional and a genuine improvement.

In closing, the Judicial Council has several substantial concerns about SB 10 in its current form and looks forward to working with the author's office and your committee to address these concerns.

Should you have any questions or require additional information, please contact Sharon Reilly at 916-323-3121.

Sincerely,

Cory T. Jasperson
Director, Governmental Affairs

CTJ/SR/yc-s
cc: Members, Assembly Public Safety Committee
Hon. Bob Hertzberg, Member of the Senate
Hon. Travis Allen, Member of the Senate
Hon. Joel Anderson, Member of the Senate
Hon. Toni G. Atkins, Member of the Senate
Hon. Jim Beall, Member of the Senate
Hon. Steven Bradford, Member of the Senate
Hon. Ricardo Lara, Member of the Senate
Hon. Holly J. Mitchell, Member of the Senate
Hon. William W. Monning, Member of the Senate
Hon. Bob Wieckowski, Member of the Senate
Hon. Scott D. Wiener, Member of the Senate
Hon. Rob Bonta, Principal coauthor, Member of the Assembly
Ms. Mica Doctoroff, Legislative Advocate, American Civil Liberties Union of California
Ms. Sandy Uribe, Counsel, Assembly Public Safety Committee
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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CRIME VICTIMS UNITED
OF CALIFORNIA

May 23, 2017

The Honorable Ricardo Lara
Chair, Senate Appropriations Committee
State Capitol, Room 5050
Sacramento, CA 95814

RE: SB 10 (Hertzberg) – Oppose

Dear Chairman Lara:

On behalf of Crime Victims United of California (CVUC), I must respectfully oppose SB 10 (Hertzberg) related to bail and pretrial release.

CVUC will be the first to tell you that the current bail and pretrial system in California are not perfect. As a matter of fact, CVUC has serious concerns with the current system and its failures to adequately provide for victims' rights provided under Proposition 9. However, CVUC nonetheless strongly supports the use of monetary bail as a means of accountability, as a backstop to ensure offenders' appearance at hearings and as a deterrent to further victimization. CVUC is open to changes to the current bail and pretrial release system and is willing to work with stakeholders to improve the system and address system concerns that have been highlighted in recent years. Notwithstanding the concerns and deficiencies with the current system as they relate to victims, as an overarching perspective CVUC is highly concerned about the increasing interest in relying almost exclusively on pretrial release in our criminal justice system. Of the utmost importance as part of any reform is it must ensure victim and overall public safety are the primary considerations and the defendant's appearance at court proceedings. We are concerned that the SB 10 and other proposals under consideration fail to sufficiently ensure these critical priorities are addressed. To argue that the new proposed framework is better for victims than the current system is and victims should therefore be less concerned fails to consider that both the current and proposed systems are flawed when it comes to victims – it shouldn't be a matter of leveraging one over another. They both need to be revised. Victims are made such based on another's actions against them – not of their own will. This is lost in the current debate in favor of considerations for the offenders' who victimized them in the first place.

First and foremost, SB 10 fails to explicitly provide for the rights afforded victims under Proposition 9, Marsy's Law. More specifically, Proposition 9 provided the constitutional right of victims to be notified and informed before any pretrial disposition of the case and to be heard upon the request of the victim at any delinquency proceeding involving a post-arrest release decision. Despite voters' approval of these rights under Proposition 9 in 2008, SB 10 fails to account for these constitutional rights. And although we appreciate that under SB 10 a person charged with a serious or violent felony or domestic violence must go before a judge before being released, the bill fails to explicitly account for the right of the victim to be notified or to be heard as part of such an appearance. Further, as discussed in greater detail below, the 48 (or less)

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timeframe under which to notify and allow a victim to be heard is wholly insufficient to meaningfully account for these rights.

With regard to the risk assessment tool contemplated under the bill, CVUC is highly concerned it will not sufficiently assess the risk to the victim or public safety posed by an offender for a number of reasons. First, there is currently no tool that we are aware of that incorporates as factors things such as serious injuries inflicted, multiple victims, a victim's impact statement, an offender's use of a weapon, or an offender's prior criminal history. Further, the current framework laid out in SB 10 is inconsistent under Penal Code Section 1275(a)(1) and 1318.3(b)(6) where under 1318.3(b)(6) states that undue weight should not be given to factors such as the offender's criminal history. This is unacceptable as an offender's criminal history is a critical consideration in determining his risk to the victim and overall public safety. Further, in hindering the ability to consider an offender's prior history the bill in turn hinders the ability to consider the prior criminal impact on the victim. The bill should not diminish the importance of this factor, and the associated victim impacts, from being considered and any tool utilized must prioritize consideration of an offender's criminal history and associated victimization to ensure an accurate assessment of the risk to the victim and public are undertaken.

Also problematic, the short amount of time associated with the risk assessment being conducted will inevitably negate the ability to conduct a meaningful assessment to ensure victim and public safety. Additionally, the short time frame will lead to violation of the victim's rights under Proposition 9 as there will not be sufficient time to include the victim in the proceedings, ensure their perspectives and concerns are entered into the record, and more. As an example, for an offender who is arrested on a Wednesday evening where Friday is a court holiday the offender would be brought to court on Thursday leaving less than 24 hours to ensure the victim is notified, much less able to participate in such a short timeframe. Other statutes relating to victim notification where victims have the opportunity and right to be notified and/or heard, particularly in situations of offender release from custody, are 15 or more days (as an example, Penal Code 646.92). Ultimately, to the extent that the assessment is not complete or available during such a short time frame, the bill provides that the offender shall be released – entirely contrary to the suggestion that the bill takes into account the risk to the victim and public safety. The absence of a robust assessment whatsoever will inevitably lead to serious harm for many victims and the overall public going forward. This approach in no way ensures victim and public safety is protected and is a seriously flawed loophole.

Relative to "non-violent" offenses, SB 10 provides that an offender shall be released without any hearing or appearance before a judge. It should be noted that the term "non-violent" is a misnomer as it includes offenses that are serious and potentially violent including crimes such as stalking; violation of a protective or restraining order; criminal threats; solicitation of a serious crime; conspiracy to commit a violent crime; and more. While a violation of a protective or restraining order may not be a violent offense, it could certainly be a precursor to one that would not be considered under this construct. It would essentially allow these offenders who push the limits of the framework to bypass the fact that the bill purportedly attempts to protect domestic violence victims through a hearing or appearance before a judge, but for actual injury being inflicted the victim would be violated and continue to fear for her safety without any assurance that such violations would not be more sufficiently considered in such pretrial release actions for the protection of the victim, which is supposed to be the primary consideration.

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Relative to the factors a judge must consider when determining the seriousness of the offense, the factors do not include the vulnerability of the victim; whether multiple victims were impacted; prior offenses involving a victim or multiple victims; prior DUIs; and more. Ultimately, a judge would be required to make a pre-trial release decision within 48 hours, impacting victims' rights as previously noted under Proposition 9.

On the issue of fiscal impacts, SB 10 would result in significant costs that are not provided for within the measure. Given the short time frames to conduct risk assessments, review the associated reports and hold hearings/appearances, the framework under SB 10 will require significant staff increases to conduct the risk assessments and review the reports 24 hours a day. Additionally, the bill does not contain any funding or incentive to ensure offenders appear or for intervention when they do not.

According to the 2015 Board of State & Community Corrections (BSCC) Jail Profile Survey, the Average Daly Population (ADP) for all county jails in California is 75,965 with capacity of all facilities being capped at 75,987 (2012 PPIC Report). The Report also highlights that there is an average of 279,102 felony warrants in the system and an average of 1,431,846 misdemeanor warrants in the system – total warrants being at approximately 1,710,948.

Based on these numbers as reported by the BSCC and with a cost per FTA as compared with the Washington, DC Pretrial Program, the costs associated with the elimination of the money bail system and implementation of the SB 10 framework in every county in the state would be over $3 billion. Recall, the Washington, DC Pretrial System costs $65 million for a population of 660,000. Clearly California is a different animal on a number of fronts as compared with DC. And yet these numbers do not even take into account the roughly 300,000 offenders who are currently out on bail at any given time. How will California seek to manage that additional caseload and ensure victim and public safety is protected? Also of note, these costs do not take into account the likelihood based on current experience that many offenders will reoffend resulting in additional criminal justice costs – not to mention additional victim and public safety impacts.

CVUC appreciates your consideration of these concerns associated with the current version of SB 10. If you have any questions regarding CVUC's opposition to this bill, please contact CVUC's Legislative Advocate, Dawn Koepke with McHugh, Koepke & Associates, at (916) 930-1993. Thank you!

Sincerely,

Harriet Salarno

Harriet Salarno
Chair

Cc: The Honorable Bob Hertzberg, Author
Members, Senate Appropriations Committee
Sean Naidu, Consultant, Senate Appropriations Committee
Eric Csizmar, Consultant, Senate Republican Office of Policy